Supreme Court U.S.
FILED
AUG 2 2002
OFFICE OF THE CLERK

No. 01-1420

In the

Supreme Court of the United States

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, ET AL.,
Petitioners,
v.
GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, AND OTHERS SIMILARLY SITUATED,
Respondents.

ON A WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

BRIEF OF THE STATES OF FLORIDA, ALABAMA, ALASKA, ARIZONA, CALIFORNIA, COLORADO, DELAWARE, GEORGIA, HAWAII, ILLINOIS, INDIANA, IOWA, KANSAS, LOUISIANA, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MISSISSIPPI, MISSOURI, NEBRASKA, NEVADA, NEW HAMPSHIRE, NEW JERSEY, NEW YORK, OHIO, OKLAHOMA, OREGON, RHODE ISLAND, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, TEXAS, UTAH, VERMONT, VIRGINIA, WEST VIRGINIA, WISCONSIN AND WYOMING, THE COMMONWEALTH OF PUERTO RICO, AND THE TERRITORIES OF THE VIRGIN ISLANDS AND AMERICAN SAMOA AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF THE *AMICI*

The *amici* are States, along with the Commonwealth of Puerto Rico and the Territories of American Samoa and the Virgin Islands (the "*amici* States"), that care for abused, neglected, and abandoned children through foster care programs. Where foster children qualify for certain federal assistance under the Social Security Act, the *amici* States often serve as the children's representative payees and, like any parent who receives social security funds on a child's behalf, use portions of those federal funds to meet the costs of the children's current care.

The *amici* States – indeed, to our knowledge, *all* States – have acted in this manner for decades and with the full knowledge and support of the Social Security Administration. Nonetheless, in *Guardianship Estate of Keffeler v. State of Washington Department of Social and Health Services*, 32 P.3d 267 (Wash. 2001), the Supreme Court of Washington held that a State serving as a child's representative payee violates 42 U.S.C. § 407(a) when the State applies the child's social security funds towards the costs of the child's current care.

The *amici* States strongly disagree with the Washington court's decision, which misread the governing law and ignored that the conduct at issue is a nationwide practice long approved by the Social Security Administration. The Washington court also ignored the ways in which the States' actions benefit foster care children and the Social Security Administration.

To provide these perspectives in this highly significant case, which threatens all States with potential liability totaling *billions* of dollars, the *amici* States submit this brief to the Court. The *amici* States urge the Court to reverse the Washington court's decision and hold that States serving as children's representative payees do not violate § 407(a) when they apply the children's social security benefits to the costs of the children's current care.

STATEMENT

Unfortunately, not every child's home provides the loving, safe and nurturing environment that children require. Various forms of abuse, neglect or abandonment are the chief reasons that States take custody of children, but, whatever the reason, once a State takes such a step, it acts in a *parens patriae* capacity and attempts to meet the child's physical, emotional and developmental needs. Foster care is a general term that refers to programs through which States place children in homes other than their natural or adoptive parents' homes, where foster parents or other caregivers attempt to provide a nurturing, albeit substitute, home environment.

Foster care is intended to be a temporary arrangement. Wherever possible, States aim to reunify children with their legal parents. When that cannot be accomplished, States seek to place children with new parents through permanent adoption. Foster homes provide a temporary solution until one of these long-term goals can be met or the child reaches majority. Particular foster care placements may last weeks, months, or in some instances years, depending on the dynamics of the child-caregiver relationship and the availability of the foster home. Although not the ideal situation, over time, a foster child may reside in numerous homes, public or private, with numerous foster parents or other caregivers.

States often look to a child's legal parents to account for the child's foster care costs.[1] In many instances, however, if not most, no parent is both available and able to pay those costs. In such cases, States typically take it upon themselves to finance the sizeable costs associated with the foster care system, utilizing any available federal assistance.

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[1] *See, e.g.*, Fla. Stat. § 402.33 (2001) (enabling state to assess foster care costs to natural parent or guardian).

On occasion, foster children are entitled to receive federal assistance under one or both of two programs offered through the Social Security Act (the Act). First, an unmarried child under age 18 may receive benefits under Title II of the Act, which provides workers with retirement, survivors, and disability insurance (RSDI benefits), if the child's parent is eligible to receive RSDI benefits or if the child is a surviving dependent of a deceased parent who was eligible for those benefits. 42 U.S.C. § 401 *et seq*. Second, a child who is disabled and meets certain income and resource limitations may receive benefits under Title XVI of the Act (SSI benefits). 42 U.S.C. § 1381 *et seq*. The fact that a child is in foster care is not directly relevant to the child's entitlement to RSDI or SSI benefits.

When the Social Security Administration (SSA), through its Commissioner, determines that a recipient may be best served by payment of RSDI or SSI benefits to a representative payee, the Act authorizes the Commissioner to appoint such a person. 42 U.S.C. §§ 405(j), 1383(a). SSA regulations promulgated by the Commissioner generally require that a representative payee be appointed whenever a recipient is under the age of 18. 20 C.F.R. § 416.610(b). This practice affords the Commissioner some assurance that a responsible adult will be accountable for a minor's benefits and will expend them in accordance with regulatory guidelines.

States are mindful of the possibility that children in foster care may qualify for social security benefits. To varying degrees, States investigate this possibility, and, where a child appears to qualify for RSDI or SSI benefits, States may complete the detailed application process on the child's behalf and apply to be the child's representative payee. The Commissioner regularly grants those applications and designates the appropriate state agency as the child's representative payee. *See* 42 U.S.C. § 405(j), 42 U.S.C. § 1383(a)(2)(B), and 20 C.F.R. §§ 404.2021, 416.621 (permitting institutions to serve as representative payees).

The *amici* States estimate that, at any given time, state agencies serve as representative payees for tens of thousands of foster children. The following chart provides general estimates of the current number of children in certain States' foster care programs, along with the number of those children for whom those States serve as representative payee for social security benefits, based upon information provided by the respective States:

State	Foster Children	State As Rep. Payee
Florida	24000	3894
Michigan	14098	1048
New Jersey	10812	280
Washington	10578	1411
Massachusetts	10538	1350
Tennessee	9801	854
Minnesota	8362	1208
Arizona	6000	198
South Carolina	4968	500
Louisiana	4500	800
Alaska	2337	228
Hawaii	2000	200

Also, based on communications undertaken in connection with this case, the *amici* States believe that *every* State serves as the representative payee for some percentage of its foster children.

States' service as representative payees for foster children is both logical and appropriate in several respects. Foster care children are generally considered a State's ward, and the State – not a foster parent – is deemed to be the child's legal custodian. The State's service as representative payee for a foster child is thus comparable to a natural parent's service on behalf of his or her custodial child. Also, unlike nearly every other person in the typical foster child's life, States are constantly present, adding an important measure of stability to their role as representative payees.

Furthermore, as a foster child's prospective or appointed representative payee, States supply valuable administrative resources to both the child and the SSA. Many State agencies expend considerable resources determining whether foster children may qualify for RSDI or SSI benefits and completing the many steps involved in applying for and securing those benefits. Where States are named representative payees, many more resources are devoted to managing the children's benefits, which includes ensuring that the funds are used in compliance with numerous federal regulations, accounting to the SSA for the use of the funds, and, in the case of SSI benefits, monitoring each child's resource levels to ensure that the child's eligibility is preserved. *See* 20 C.F.R. § 416.1205(c) (imposing $2000 maximum on certain non-exempt resources). Over the course of many years, the States have acquired tremendous expertise in the intricacies of service as a representative payee and established efficient working relationships with the Social Security Administration.

All representative payees are required to expend beneficiaries' social security funds in accordance with federal law. By regulation, a representative payee may use RSDI or SSI benefits "only for the use of the beneficiary in a manner and for the purposes he or she determines . . . to be in the best interests of the beneficiary." 20 C.F.R. §§ 404.2035(a), 416.635(a). The Commissioner has determined that benefits are expended for the use and benefit of the beneficiary "if they are used for the beneficiary's current maintenance" and that "current maintenance" includes "cost incurred in obtaining food, shelter, clothing, medical care, and personal comfort items." 20 C.F.R. §§ 404.2040(a)(1), 416.640(a). Institutional care costs are also authorized expenditures, 20 C.F.R. §§ 404.2040(b), 416.640(b), and while a representative payee is not required to use benefits to satisfy debts arising prior to the benefit's payment period, the representative payee is permitted to do so if the beneficiary's current and reasonably foreseeable needs are met. 20 C.F.R.

§ 404.2040(d). Where a child's current monthly benefits exceed the amount used by the representative payee in accordance with the SSA's regulations, the representative payee must conserve or invest the excess funds. 20 C.F.R. §§ 404.2045(a), (c), 416.645(a), (c); *cf.* 20 C.F.R. § 416.640(e) (separately providing for the use of certain large retroactive SSI payments).

Based on this regulatory scheme, States serving as representative payees for foster children have regularly expended portions of the children's benefits to pay costs associated with the children's current care: shelter, food, clothing, etc. Thus, for example, if a state social services agency that had been appointed a foster child's representative payee received the child's RSDI or SSI check for July 2002, then the agency might use portions of those funds to pay for foster care expenses incurred by the agency in July 2002. States have done this in the good faith belief that, like any parent who receives social security benefits as the representative payee for a child, controlling federal law permits at least part of those funds to be directed towards the children's current care.

Significantly, the *amici* States believe that, like Washington in this case, *every State* follows this practice to some degree. Furthermore, while the Commissioner is required to implement and has implemented monitoring procedures to oversee how institutional representative payees spend their beneficiaries' benefits, *see* 42 U.S.C. §§ 405(j)(3)(B), 1383(a)(2)(C)(ii), the *amici* States are aware of no SSA audit of any state foster care program that has ever questioned these routine expenditures. To the contrary, the SSA's positive reviews of this practice have long given the States every indication that these expenditures are lawful and appropriate.

Notwithstanding the Commissioner's regulations that expressly permit utilizing benefits for a beneficiary's current care costs, as well as the States' longstanding reliance on the Commissioner's approval of these expenditures, the Supreme Court of Washington declared this practice to be unlawful in the

case now before the Court. In the Washington court's view, the state agency responsible for Washington's foster care program violated 42 U.S.C. § 407(a) – the Act's so-called "anti-alienation" provision[2] – each time the agency used a foster child's social security benefits to pay costs associated with the child's current care. If that holding is affirmed, then, like Washington, *all States* may face claims to enjoin this practice and recover substantial monetary damages. In the case of States with large foster child populations, such as Florida, liability for this supposed misuse of federal benefits could amount to *hundreds of millions of dollars* for that State alone.[3] In all States, fundamental alterations would need to be made to long-approved practices regarding the administration of funds on behalf of foster care children.

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[2] 42 U.S.C. § 407(a) provides:

> The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

This provision is directly applicable to RSDI benefits. It is made applicable to SSI benefits by 42 U.S.C. § 1383(d)(1).

[3] For instance, during fiscal year 2000-2001, Florida received approximately $12.7 million in social security payments for foster children for whom the State served as representative payee. Of that $12.7 million, approximately $8.4 million were used on behalf of the intended beneficiaries to pay for foster care expenses such as room and board. If, as in Washington, Florida were sued to recover all such expenditures during the past 19 years, the potential damages exposure could easily reach hundreds of millions of dollars.

The Washington court's decision is erroneous and should be reversed. As the *amici* States demonstrate in the following section, States that serve as representative payees for foster children do not violate § 407(a) when they utilize a foster child's benefits to pay for the child's current care.

ARGUMENT

In resolving the case below, the Supreme Court of Washington viewed the sole issue as whether the state foster care agency "acted as a creditor" when it used the children's social security benefits to pay for the children's current care. Pet. App., at A-19. That focus was wholly misplaced and caused the court to reach a result that is plainly inconsistent with the statutory scheme. Furthermore, to the extent that any ambiguity exists in that scheme, the Washington court should have deferred to the Commissioner's reasonable view that States may serve as foster children's representative payees and, as such, utilize the children's RSDI and SSI benefits to pay for their current care without violating 42 U.S.C. § 407(a). For these reasons, this Court should reverse the decision below.

I. THE ACT PERMITS STATES APPOINTED TO SERVE AS FOSTER CHILDREN'S REPRESENTATIVE PAYEES TO USE THE CHILDREN'S BENEFITS FOR THEIR CURRENT CARE WITHOUT VIOLATING 42 U.S.C. § 407(a).

As explained above, States routinely serve as representative payees for foster children, and States regularly use portions of the children's RSDI and SSI benefits to pay for their current care. In doing so, States do no more than perform the authorized function of the representative payee, which is to expend such funds for the "use and benefit" of the beneficiary. 20 C.F.R. §§ 404.2035, 416.635(a). The Supreme Court of

Washington's principal error was in failing to acknowledge that, regardless of whether the payee is acting "as a creditor," a representative payee's actions do not violate the anti-alienation provision found at § 407(a).

Statutory interpretation begins with the statute's text and an inquiry into whether the language has a plain and unambiguous meaning with regard to a particular dispute. *Barnhart v. Sigmon Coal Co.*, 122 S. Ct. 941, 950 (2002); *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997). The statute must not be viewed in isolation, however. The Court considers "'not only the bare meaning' of the critical word or phrase 'but also its placement and purpose in the statutory scheme.'" *Holloway v. United States*, 526 U.S. 1, 6 (1999) (*quoting Bailey v. United States*, 516 U.S. 137, 145 (1995)); *see also Jones v. United States*, 527 U.S. 373, 389 (1999) ("Statutory language must be read in context and a phrase 'gathers meaning from the words around it.'") (*quoting Jarecki v. G.D. Searle & Co.*, 367 U.S. 303, 307 (1961)); *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 809 (1989) ("It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.").

Section 407(a) states, in part, that "none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law." By its plain text, this language prohibits persons from alienating social security recipients from their benefits.

The Court has twice construed this provision, and in both cases the Court confirmed that the statute offers broad protection from creditors' efforts to attach social security benefits. In *Philpott v. Essex County Welfare Board*, 409 U.S. 413 (1973), the Court considered a New Jersey county's attempt to reach the assets of a bank account into which the petitioner's retroactive social security benefits had been paid. The county asserted that

had the retroactive payments been issued during the time periods for which they were paid, the county would have deducted the amount of those benefits from the petitioner's welfare payments. The Court held that § 407(a) plainly barred the county's action. The Court specifically rejected the argument that those who provide care and maintenance for social security recipients are not considered the recipient's creditors and are therefore outside the scope of § 407(a), noting "§ 407 does not refer to any 'claim of creditors'; it imposes a broad bar against the use of any legal process to reach all social security benefits." *Id.* at 417.

In *Bennett v. Arkansas*, 485 U.S. 395 (1988), the State of Arkansas attempted to attach a state prisoner's social security benefits to help satisfy the care and maintenance costs associated with his incarceration. Arkansas defended its actions by arguing that § 407 contains an implicit exception for those who provide for the care and maintenance of a social security recipient, but the Court refused to read such an exception into the statute's plain language and held that § 407 barred the attachment. *Id.* at 397-98.

The Supreme Court of Washington relied on *Philpott* and *Bennett*, and similar cases from other courts, when it held that § 407(a) places social security benefits "beyond the reach of the state, however clever or subtle its attempt to seize them." Pet. App., at A-23. There is a critical difference, however, between this case and the cases relied upon by the Washington court. In those cases, the state agencies used a coercive process to seize the recipients' benefits from the recipients, whereas, here, the state agency in charge of Washington's foster care system was appointed the foster children's representative payee, received the children's social security funds, and was authorized to dispose of them, in its discretion, for the children's "use and benefit."

The Washington court was aware of this distinction but found it to be of no moment. In that court's view, the state agency could "act like a creditor despite the fact it is a representative payee" and thereby violate § 407(a). Pet. App., at

A-26. This reading, which holds that a representative payee cannot pay itself with a beneficiary's funds any time the payee appears to be a beneficiary's creditor, ignores both the statute's language and its context and produces a result that is clearly at odds with the statutory scheme.

To begin, nothing in § 407(a) suggests that the statute's application should turn solely on whether one's actions may be seen as those of a creditor. As the Court noted in *Philpott*, the statute does not employ the term "creditor." The statute simply prohibits all efforts to alienate a recipient from his or her social security benefits.

A duly appointed representative payee, however, does not alienate a recipient from his or her benefits by expending a beneficiary's social security funds. To the contrary, the representative payee actually receives the money on the beneficiary's behalf and, in this sense, stands in the beneficiary's shoes, having been appointed by the Commissioner to manage the funds because the beneficiary's interests would be best served by that appointment. *See* 42 U.S.C. §§ 405(j), 1383(a). Just as the anti-alienation provision of § 407 should have no application to recipients who receive their social security benefits directly, that provision should have no application to representative payees who are appointed to receive benefits on beneficiaries' behalf.

Indeed, in the current case, neither respondents nor the Washington court appeared to contest that the Washington state agency could have been paid from the foster children's benefits had someone other than the agency been appointed the children's representative payee and chosen to make those payments. Assuming that a payment to the agency is appropriate under the numerous regulations that govern a representative payee's expenditures, it makes no sense to say that the payment violates § 407(a) if the payee is the agency but is entirely permissible if the payee is any other person. Nothing in § 407(a) suggests that it is intended to limit the discretion of representative payees.

This is made manifest by the fact that Act speaks directly to the possibility of creditors serving as representative payees. *See United Sav. Assn. of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 371 (1988) ("A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme . . . because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law."). In addition to numerous other restrictions on who may qualify as a representative payee, the Act generally prohibits creditors who supply a beneficiary with goods or services for consideration from being appointed as the beneficiary's payee. § 405(j)(2)(C)(i)(III). The Act expressly excepts certain creditors from this rule, including state-licensed care facilities and those who are a beneficiary's legal guardian or legal representative. § 405(j)(2)(C)(iii). The purpose of these provisions is to prevent most, though not all, traditional creditors from serving as representative payees, given the obvious potential for creditors to give their accounts with the beneficiary priority when deciding how to expend a beneficiary's benefits. Yet these provisions are entirely unnecessary, and are rendered wholly superfluous, if, as the Supreme Court of Washington held, § 407(a) stands as a blanket prohibition against any representative payee who so much as acts like a creditor from paying itself out of the beneficiary's funds. Creditors, as such, would pose no threat to beneficiaries' benefits, and Congress had no reason to address which creditors may potentially serve as representative payees and which may not. Statutory provisions should not be interpreted in a manner that renders other provisions superfluous. *E.g.*, *Pennsylvania Dept. of Public Welfare v. Davenport*, 495 U.S. 552, 562 (1990) ("Our cases express a deep reluctance to interpret a statutory provision so as to render superfluous other provisions in the same enactment."); *see also, e.g.*, *TRW, Inc. v. Andrews*, 122 S. Ct. 441, 448-49 (2001); *Circuit City Stores, Inc. v. Adams*, 533 U.S. 105, 113 (2001); *Kawaauhua v. Geiger*, 523 U.S. 57, 62 (1998).

This is further made clear by the Act's specific contemplation that state-licensed care facilities may serve as representative payees. As just mentioned, state-licensed care facilities are excepted from the general prohibition against the appointment of creditors who supply goods or services for consideration. If, as the Washington court held, a creditor appointed as a representative payee may never use any portion of the beneficiary's benefits to pay for current care supplied by the creditor, then Congress could only have expected that private care facilities that ordinarily expect consideration from patients would undertake the troubles of serving as patients' representative payees without being able to use any portion of the patients' benefits towards their current care. That is simply illogical. *See, e.g.*, *Department of Revenue of Oregon v. ACF Indus., Inc.*, 510 U.S. 332, 343 (1994) (rejecting an "illogical" reading of a statute).

The Act also makes specific references to state institutions as possible representative payees and requires the Commissioner to establish particular procedures to monitor the expenditures made by all such payees. 42 U.S.C. §§ 405(j)(3)(B), 1383(a)(2)(C)(i). The only principled reason for that requirement is that Congress intended state agencies, such as those that serve the States' foster children, to serve as representative payees for numerous beneficiaries and that monitoring such agencies' expenditures should be accomplished through special, efficient procedures designed to accommodate those payees. Here, too, it is unclear why Congress would expect any agency to serve in this capacity, particularly for numerous beneficiaries, if § 407(a) precluded the agency from using any benefits toward beneficiaries' current care.

This concern bears directly on the *amici* States and their foster care programs with respect to the question before the Court. Screening foster care children for RSDI or SSI eligibility, applying for benefits on the children's behalf, applying to be the children's representative payee, monitoring the expenditures for

each child, and accounting to the Commissioner during periodic audits of how children's funds have been expended are all administratively complex processes that require a substantial output of States' resources. If the Supreme Court of Washington's view of § 407(a) is affirmed, some States may have financial difficulty continuing these costly efforts with respect to foster care children.

When the Act is read as a whole, however, and the anti-alienation provision is viewed in the context of the representative payee's role, it is apparent that the Supreme Court of Washington erred in holding that the agency administering Washington's foster care program violated § 407(a) by utilizing beneficiaries' benefits to pay for their foster care costs. The agency was bound to observe the laws and regulations that specifically govern representative payees, but its expenditures did not and could not violate the anti-alienation provision found at § 407(a).

II. ANY AMBIGUITY SHOULD BE RESOLVED IN FAVOR OF THE COMMISSIONER'S REASONABLE VIEW THAT AUTHORIZED EXPENDITURES BY REPRESENTATIVE PAYEES DO NOT VIOLATE 42 U.S.C. § 407(a).

As the *amici* States demonstrated above, § 407(a) does not limit a representative payee's discretion to pay itself for expenses incurred in caring for a beneficiary. If, however, there is any ambiguity in the statutory scheme, the Court should defer to the Commissioner's reasonable view that authorized expenditures do not violate the anti-alienation provision found at § 407(a). The Supreme Court of Washington completely ignored the Commissioner's position, though she twice filed *amicus curiae* briefs in the Washington litigation to express her views.

Where a statute's language is ambiguous or open on a question, the Court generally defers to reasonable interpretations by the agency charged with the statute's execution. *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-45 (1984). Furthermore, an agency's interpretation of its own regulations is controlling unless it is "plainly erroneous or inconsistent with the regulation." *Auer v. Robbins*, 519 U.S. 452, 461 (1997) (quotation omitted).

Here, the Commissioner has interpreted § 407(a) not to prohibit representative payees from expending beneficiaries' benefits on their current care costs, even where the payees are state agencies and the costs are those incurred by the agencies in the care of foster children. These interpretations can be seen in three different forms. First, the Commissioner's regulations plainly provide that RSDI or SSI benefits used for a beneficiary's current maintenance are deemed to be utilized for the beneficiary's use and benefit. 20 C.F.R. §§ 404.2035(a), 404.2040(a)(1), 416.635(a), 416.640(a). No exception is made for situations where the care is provided by a representative payee.

Second, while the Commissioner is specifically obliged to monitor expenditures by institutional representative payees, 42 U.S.C. §§ 405(j)(3)(B), 1383 (a)(2)(C)(ii), and the Commissioner has long done so, the *amici* States are unaware of any instance where anyone at the SSA has utilized§ 407(a) to question, let alone disapprove, any of the countless instances where the States have applied foster children's RSDI or SSI benefits toward their foster care costs. As explained earlier in detail, the *amici* States (and, we believe, *all* States) have long followed this practice in full view of the SSA and never received any indication that they were violating the anti-alienation rule. To the contrary, the SSA has always found the *amici* States to be in compliance with federal law with regard to this aspect of their expenditures.

Third, the Commissioner filed two *amicus curiae* briefs in the Washington litigation in support of the Washington state

agency's practices. Such briefs are a legitimate means of expressing agency policy, *Auer*, 419 U.S. at 461, yet, in its decision, the Washington Supreme Court made no mention of these briefs or the Commissioner's position.

Notwithstanding the Washington court's unwillingness to address the Commissioner's views, her position regarding the application of § 407(a) to representative payees is clear: a state agency serving as a foster child's representative payee does not violate § 407(a) by expending RSDI or SSI benefits to pay for the child's current care. This view is also entirely reasonable, as it harmonizes the anti-alienation provision with the functions of representative payees and gives meaning to the Act's provisions that limit the types of creditors that may serve as representative payees.

In sum, to whatever extent the Act can be viewed as ambiguous regarding the application of § 407(a) to representative payees, the Commissioner's interpretation of the Act is reasonable and entitled to deference. Because that interpretation is inconsistent with the Supreme Court of Washington's decision below, that decision should be reversed.

CONCLUSION

For all of the foregoing reasons, a state agency serving as a foster child's representative payee does not violate 42 U.S.C. § 407(a) by utilizing the child's benefits to pay costs associated with the child's current care. The Supreme Court of Washington erred in holding to the contrary, and this Court should reverse that decision.

Respectfully submitted,

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